IN THE COUNTY COURT OF VICTORIA
AT MELBOURNE
CRIMINAL DIVISION
GENERAL LIST

Revised
Not Restricted
Suitable for Publication

Case No. CR-19-01646
Indictment No. K10298115

DIRECTOR OF PUBLIC PROSECUTIONS

v

VU NGUYEN (aka TRUNG LING NGUYEN)

JUDGE:	HER HONOUR JUDGE MORRISH
WHERE HELD:	Melbourne
DATE OF HEARING:	6 December 2019
DATE OF SENTENCE:	17 December 2019
CASE MAY BE CITED AS:	Director of Public Prosecutions v Nguyen
MEDIUM NEUTRAL CITATION:	[2019] VCC 2228

REASONS FOR SENTENCE

Subject:	CRIMINAL LAW
Catchwords:	Sentence – obtaining financial advantage by deception – attempt to obtain a financial advantage by deception – make false document – plea of guilty
Legislation Cited:	*Crimes Act* 1958, s82(1), s83A(1), s321M; *Sentencing Act* 1991
Sentence:	Total effective sentence of 15 months' imprisonment, wholly suspended for a period of two years. Section 6AAA declaration: Total effective sentence of 22 and one half months' imprisonment with a non-parole period of 15 months'.

APPEARANCES:	Counsel	Solicitors
For the DPP	Mr A Sprague	Ms A Hogan, Acting Solicitor for Public Prosecutions
For the Accused	Ms K Ljubicic	Stary Norton Halphen Pty Ltd

HER HONOUR:

1 Vu Nguyen: You are to be sentenced in respect of one charge of obtaining a financial advantage by deception (Charge 1), one charge of attempting to obtain a financial advantage by deception (Charge 2) and one charge of making a false document (Charge 3), contrary to ss. 82(1), 321M and 83A(1) of the *Crimes Act* 1958.

2 The maximum applicable penalties are:

(i) Charge 1, obtain financial advantage by deception, 10 years' imprisonment;

(ii) Charge 2, attempting to obtain a financial advantage by deception, five years' imprisonment; and

(iii) Charge 3, make false document, 10 years' imprisonment.

3 You pleaded guilty to all charges when arraigned before me on 6 December 2019.

Circumstances of offending

4 The circumstances of offending are well set out in the Prosecution Opening on plea, dated 13 November 2019, tendered as Exhibit A. You have accepted the accuracy of that document and you are to be sentenced on the facts asserted therein. For the sake of convenience, I shall attach a copy of Exhibit A as Annexure A, to these Reasons for Sentence. Suffice it to say, for the purposes of sentencing you today, that you had previously been employed by the Commonwealth Bank of Australia (CBA), working as a mobile lender, predominantly within the Vietnamese community. You had been employed by the CBA for five years, including three years as a mobile lender. At the time of committing these offences you had left the bank and were unemployed. You used your knowledge of bank procedures to perpetrate these crimes.

Charge 1

5 On or about 11 July 2007, you prepared a home loan redraw slip to withdraw $210,000 from a CBA home loan account in the name of Hai Thi Hoang, who was a customer that you had introduced to the bank. To your knowledge, the loan account had previously been repaid, leaving a large amount available for redraw. The false document that you prepared contained signatures purporting to be that of the account holder and that of the bank's authorised signing officer. You also prepared three deposit slips in an effort to disburse the $210,000 as follows:

(i) $60,000 into an account in the name of Thi B Le;

(ii) $70,00 into an account in the name of Thi N Dam, the mother of your girlfriend at the time; and

(iii) $80,000 into an account in the name of T P Nguyen; collectively referred to as "the beneficiaries".

6 The debit and deposit slips were placed into the internal CBA mail by an unknown means and processed overnight on 11 July 2007. This resulted in the three beneficiaries having the funds available in their accounts as soon as the slips were processed.

7 The next morning, on 12 July 2007, all of the beneficiaries attended at various CBA branches where they withdrew large amounts of cash and made further attempts to withdraw additional funds.

(i) T P Nguyen withdrew $30,000 in four transactions between 7.00 am and 11.00 am, before being arrested while attempting to withdraw a further $40,000;

(ii) Thi B Le withdrew $9,000 and attempted to place $50,000 into T P Nguyen's account, using a bank cheque, although this was subsequently cancelled by the bank;

(iii) Thi N Dam and her daughter, your ex-girlfriend, withdrew $20,000 and later attempted to withdraw another $50,000, although this latter transaction was blocked.

8 A total of $59,000 was withdrawn by the beneficiaries before the bank froze the relevant accounts.

Charge 2

9 Sixteen days later, on or about 27 July 2007, you used a similar method in an effort to withdraw $250,000 from a home loan in the name of other customers of the bank. You falsified documents to make it appear as though the account holders had signed the withdrawal documents and that the bank's authorising officer had approved the withdrawal. You also prepared a corresponding deposit slip for the $250,000 to be deposited in the name of Linh Vu Pham, your ex-girlfriend's brother. Again, the debit and deposit slips were placed by an unknown means into the CBA internal mail system. Fortunately, before the documents were conveyed to the processing centre, bank staff who had dealt with the first deception discovered the slips and removed them from the mail system. As a consequence, the transaction was not processed and no funds were withdrawn from the customers' account.

Charge 3

10 You were arrested by police at your home on 31 August 2007. At the time of your arrest, police recovered three USB storage drives found to contain electronic copies of various payslips and bank statements in various names. The documents appeared to be fraudulent. You had made twenty-two false documents, consisting of fourteen pay slips and eight bank statements, apparently for the purpose of supporting loan applications. Charge 3 is a rolled up charge including all of these false documents.

Record of interview

11 When interviewed by police on 31 August 2007, you made full and frank admissions about each of the charges. You explained that you were

experiencing financial difficulty, your family had obtained a personal loan which had short-term and high interest, and you felt compelled to commit these crimes to pay back the money. The debt related to an overseas business venture in Vietnam. It was taken out in late 2006 for $40,000, but you owed $80,000. The reason why you committed Charge 2 was because you had not been successful in obtaining all of the money you hoped to achieve by committing Charge 1.

12 As for the false documents, the subject of Charge 3, you created these to enable people to obtain personal loans or credit cards. You were to be paid a fee of approximately $2,000 for your efforts. You explained that you did not see it as wrong to make these false documents, because the clients intended to repay these loans and this type of conduct is often undertaken by brokers and home lenders. Following interview, you were released pending summons.

Procedural history

13 Following your arrest and release pending summons on 31 August 2007, almost two years later, on 6 July 2009, charges were filed and a summons was issued. The summons was never served as police were unable to locate you. A warrant was subsequently issued. The chronology from here is a little unclear. It appears that in approximately 2010, you applied for a job and it was discovered that you had an outstanding warrant. You made efforts to find out why the warrant had been issued. At any rate, on 16 January 2013, a further warrant was issued. It was not until 2 February 2019, when the warrant was finally executed. The filing hearing occurred on 18 February 2019. Thereafter, there were a number of committal mentions which were adjourned so that you could obtain a grant of legal assistance to fund your representation. Eventually, on 16 August 2019, at the final committal mention, the matter resolved and proceeded by way of straight hand-up brief. You indicated your intention to plead guilty to the charges.

Gravity of the offences

14 These charges represent serious examples of the crimes with which you have been charged. Although you were no longer employed by the CBA, and as such were not in a position of trust, you nevertheless exploited the knowledge of the banking processes that you had gained as an employee, to defraud the bank. The account holders were customers whom you had introduced to the bank and you knew that there were funds available in the various loan accounts.

15 In such cases, dominant sentencing factors include principles of general deterrence, denunciation and condemnation, protection of the community and just punishment.

16 Your counsel, Ms Ljubicic, has quite properly and frankly conceded that the only appropriate response to your offending is to impose a term of imprisonment. In all the circumstances, however, she urged that the term so imposed should be wholly suspended. I shall now turn to the factors that your counsel submitted combine to justify such a disposition.

Guilty plea

17 At committal, this matter proceeded by way of straight hand-up brief. It is accepted by the Crown that you indicated your intention to plead guilty to the charges at the first opportunity.

18 I accept you have never sought to test or challenge the Crown case. No witness has ever been required to give evidence against you.

19 When interviewed by police you made comprehensive admissions.

20 I am satisfied, in all the circumstances, that you indicated your intention to plead guilty to these charges at the first reasonable opportunity. In determining the weight to be given to your plea of guilty, I take into account the following factors:

21 (i) the timing of your plea;

22 (ii) you are entitled to a statutory discount because of your plea;

23 (iii) I accept that your plea is indicative of your true remorse;

24 (iv) you have avoided the cost and inconvenience of a trial. You have spared witnesses the inconvenience of giving evidence, both at committal and at trial;

25 (v) your plea is consistent with your co-operation with the police evidenced in the record of interview; and

26 (vi) there is enormous social utility involved in your guilty plea.

Factors personal to you

27 You are currently 43 years of age, about to turn 44. At the time of offending, you were aged 31.

28 You were born in Saigon, Vietnam. After several unsuccessful attempts, your family was finally able to flee Vietnam, following the humanitarian crisis that ensued after the war. You and your father fled to the Philippines by boat. You were aged approximately six years at the time. You and your father remained in the Philippines for two years, before you were able to immigrate to Australia. It was not until many years later that your mother and sibling were able to join you in Australia. Following acceptance of your refugee claims, you and your father settled in Springvale, where you lived with your aunt.

29 You commenced schooling at Grade 5 and ultimately completed Year 12. Throughout your childhood, your relationship with your father was strained. He was a strict disciplinarian who punished you by physical beatings.

30 When you were aged approximately 15 years, your mother and younger sibling were able to immigrate to Australia and your family was reunited.

31 Upon completing Year 12, you commenced an international trade qualification at TAFE, Victoria University of Technology, but then transferred to a double bachelor degree in international trade and marketing. You completed your studies successfully.

32 Whilst at university, you met your partner.[1] Your first child was born shortly after you completed your studies. Upon completing your studies, at about age 24 or 25, you worked initially as a door-to-door salesman for a telephone company, a job which you held for approximately eight months. After that, you joined the Commonwealth Bank, where you remained employed for five years. You became a very successful mobile lender, but you left the bank because, using your words:

> '… I was so stressed and it was putting pressure on the marriage. I left the bank at about 30. It was around that time my wife first left me and she took our son and I had a mental breakdown and got into the heroin. I wasn't into heroin when I was with the bank, but when I left the bank I was into heroin for about 12 months.'[2]

Events leading to your offending

33 When assessed by Mr Jeffrey Cummins, consulting clinical and forensic psychologist, you explained the reasons why you offended. Mr Cummins reported:

> 'He was vague about the precise details of the charges to which he is pleading guilty. Concerning his offending he said – "Well my ex-wife and her mother wanted to start a business in Vietnam and they wanted to get me involved and they borrowed about $80,000 from the local Vietnamese community, but it turned out the money was borrowed from loan sharks and in no time, we were being chased for a debt of about $200,000 and then after that the debt was growing. I was being threatened and my wife was also being threatened. These people knew I'd worked at the Commonwealth Bank and they asked me to fill out and sign withdrawal slips and then they withdrew money from the people's accounts. I accept what I did was definitely wrong. The police interviewed me back in 2007. I don't know why it's taken them so long to finalise this. At the time of offending I was under stress because of being chased and threatened by the loan sharks and since being interviewed by police I've been under pressure because of the stress within my marriage and because of worrying about what will happen when I go to court.'"[3]

1 She is referred to as your wife in these reasons for sentence.
2 See exhibit 2, page 2, report of Mr Jeffrey Cummins dated 26 November 2019
3 See exhibit 2, pages 3-4, report of Mr Jeffrey Cummins dated 26 November 2019

34 You told Mr Cummins that you knew what you were doing was wrong, but that you felt you had no option but to resort to the offending, in order to protect your wife's life, as well as your own. It would appear that the prosecution does not dispute this explanation. Nor does it dispute that your co-offender's actions are related to your attempts to repay the loan sharks.

Events following your offending

35 With the help of your wife, you were able to beat your heroin addiction. You got your life back on track and obtained employment, initially working in a call centre for three years and then as a "para-planner" with a financial investment firm, where you also remained for three years. You furthered your education, obtaining a Diploma of Financial Planning, and then you worked as senior para-planner for a life insurance company, where you remained until approximately four months ago. You are now in receipt of a Newstart Allowance, although you have been offered employment in the field of event management.[4]

Substance abuse

36 You first used cannabis at high school during a period when you had run away from home as a result of your father's violent acts committed against you. Shortly after commencing university, when you were aged approximately 19 years, you tried heroin for the first time. You developed a heroin use habit very quickly. You never took heroin intravenously, preferring to smoke the drug. This period of heavy drug use was short lived as your wife assisted your recovery upon commencing the relationship with you. You entered a rapid detoxification program and remained abstinent from heroin for approximately five or six years while you were working and raising your family.

37 You relapsed into heroin use when you were aged approximately 31 years and upon becoming unemployed. At this time, you and your wife temporarily separated, you quit your job with the bank, you were under immense pressure

[4] See exhibit 3, character reference from Bobby Cuong Huynh dated 5 December 2019

and you were using drugs, all the while trying to reconcile with your wife.

Current circumstances

38 You and your wife were able to reconcile for a period and there are now four children of the marriage. Unfortunately, the marriage eventually broke down and you and your wife finally separated approximately three years ago. Your wife has custody of all four children and you live with your mother. You have not seen your children in the past four months. Apparently there are no formal orders providing a contact regime.

Mental health status

39 Mr Cummins assessed you on 11 November 2019. He thought you looked and sounded at least moderately depressed. You presented as being mildly-moderately anxious.[5] Mr Cummins opined that you should be receiving ongoing mental health treatment for symptoms of depression. At interview, you acknowledged that you are currently feeling at risk of returning to illicit drug use. Accordingly, Mr Cummins also considered that you require treatment relevant to this issue. Based upon his assessment, Mr Cummins stated that he expected your mental health to deteriorate if you were to be incarcerated, because you also present as being depressed and because you believe that if incarcerated, your ex-wife will use this as an opportunity to attempt to permanently exclude you from the lives of your children.[6]

40 Mr Cummins opined that you have some insight into the importance of receiving mental health treatment. He also thought that imprisonment would be more onerous for you, because of the exclusion that would occur between you and your children.[7]

Prior convictions

41 You have a number of prior court appearances, mainly in relation to illicit drugs. On 22 July 1998, in the Magistrates' Court at Dandenong, you were

5 See exhibit 2, page 4
6 See exhibit 2, page 5, paragraph 38
7 See exhibit 3, pages 5-6

convicted of trafficking heroin. You were sentenced to six months' imprisonment, wholly suspended for twelve months. You were also convicted of using heroin, and received a seven-days' imprisonment term to be served wholly concurrently with the suspended sentence. You abided by the terms of your suspended sentence. Since committing the offences for which you are to be sentenced today, you have committed no further offences. There is nothing pending.

Parity

42 Your co-offenders were dealt with as follows:

Paul Than Nguyen

43 In relation to the cash withdrawals on 12 July 2007, Paul Than Nguyen was sentenced on 29 June 2010 at Sunshine Magistrates' Court, in relation to four charges of theft. He was sentenced to three months' imprisonment, wholly suspended. Mr Nguyen was ordered to pay compensation in the amount of $29,300. It appears that the debt your wife owed was to Mr Nguyen.

Thi Nga Dam

44 In relation to the withdrawal and attempted withdrawal of cash on 12 July 2007, Thi Nga Dam was sentenced on 25 June 2019 at Melbourne Magistrates' Court in relation to two charges of theft and one charge of attempted theft. She was sentenced to an adjourned undertaking for twelve months. Thi Nga Dam is your ex-wife's mother.

Diem Pham

45 In relation to the withdrawal and attempted withdrawal of cash on 12 July 2007, Diem Pham was sentenced on 4 June 2019 at Melbourne Magistrates' Court, in relation to two charges of theft, one charge of attempted theft and one charge of failing to answer bail. She was sentenced to an adjourned undertaking for twelve months.

46 Diem Pham is your ex-wife.

Delay

47 There has been considerable delay between the period of your offending and the matter being brought before the court. It would appear some of the delay is attributable to you; however, much of the delay is unexplained. What is most important is what has happened in the period of delay. During that time, it would appear that you have rehabilitated yourself to a large degree and, most importantly, you have stayed out of trouble with the law.

Prospects of rehabilitation

48 Although you have led a law-abiding life since being charged with these offences, it would appear that, as Mr Cummins recommended, you require ongoing treatment for your depression and to assist you from falling into a relapse in heroin use.

49 You are remorseful for your conduct, you knew it was wrong and I accept that you were under enormous pressure at the time of offending. Fortunately, those pressures have passed and I accept you are unlikely to re-offend in a like manner in the future.

Sentencing submissions

50 As mentioned earlier, your counsel has conceded that the only appropriate response to your offending is the imposition of a term of imprisonment. She submitted that given the matters advanced in mitigation, the sentences should be wholly suspended. She did not seek that you be released on a community corrections order.

51 The learned prosecutor, Mr Sprague, conceded that such a disposition is open given the delay, your prospects of rehabilitation and because of principles of parity. Quite properly, he pointed out that your role was the critical one in the commission of these offences, given your knowledge of the various loan accounts and of the bank's internal processes.

Sentences to be imposed

52 I take into account all of the matters personal to you to which I have referred,

including your prospects of rehabilitation. I must also take into account such matters as deterrence, especially general deterrence, which is of importance in a case such as this. I am required to take into account the question of the protection of members of the community from you and bear in mind the likelihood of your re-offending. I am called upon by the *Sentencing Act* to manifest the community's denunciation of your conduct and generally to impose a just punishment.

53 Taking into account all of these factors, the sentences of the court are as follows:

54 On Charge 1, obtaining a financial advantage by deception, you are convicted and sentenced to a twelve (12) months' imprisonment.

55 On Charge 2, attempt to obtain a financial advantage by deception, you are convicted and sentenced to six (6) months' imprisonment.

56 On Charge 3, make false document, you are convicted and sentenced to one (1) month's imprisonment.

57 On the question of whether cumulation is required and, if so, how much, I take account of the fact that there is a degree of overlap between the conduct the subject of Charges 1 and 2, in that your attempt to obtain a financial advantage by deception was committed in an effort to obtain the total amount of funds you sought to obtain when committing Charge 1. Even so, these were discrete acts involving offending of such gravity, that total concurrency would fail to do justice. That said, I must also pay regard to principles of totality and proportionality and avoid imposing a crushing sentence.

58 Balancing these matters, I consider it appropriate to order some period of cumulation. I therefore direct that three (3) months of the sentence imposed in respect of Charge 2, be served cumulatively upon the sentence imposed on Charge 1, the base sentence. That results in a total effective sentence of

fifteen (15) months' imprisonment.

59 I now turn to the question of whether that term should be wholly suspended.

60 In considering whether it is desirable in the circumstances to make such an order I must, in addition to the other matters advanced by the Crown and your counsel, have regard to these four things —

(a) the need, considering the nature of the offence, its impact on the victims of the offences and any injury, loss or damage resulting directly from the offences, to ensure that the sentence—

(i) adequately manifests the denunciation by the court of the type of conduct in which you engaged; and

(ii) adequately deters you or others from committing offences of the same or a similar character; and

(iii) reflects the gravity of the offence; and

(b) any previous suspended sentence of imprisonment that has been imposed on you and whether you breached the order suspending that sentence; and

(c) whether the offence was committed during the operational period of a suspended sentence of imprisonment; and

(d) the degree of risk of you committing another offence, punishable by imprisonment during the operational period of the sentence, if it were to be suspended.

61 Taking all these matters into account, including the concession made by the learned prosecutor, I am satisfied that it is desirable in the circumstances to make such an order.

62 I therefore direct that the whole of the sentence imposed be suspended for a period of two (2) years.

63 You must not, during the period of suspension, commit another offence punishable by imprisonment. If you do, you would be in breach of the terms of the suspended sentence and should expect to be brought back before the court and be ordered to serve the whole of the sentence that was suspended. I must warn you that there are very few circumstances in which you could avoid having to serve the whole of the sentence that was suspended. You would have to persuade the court that it would be unjust to restore the sentence, in view of any exceptional circumstances which have arisen since the order suspending the sentence was made. This is a very hard test to satisfy, so you should act on the assumption that if you breach this order in the way I have described, you would be brought back before me and I would order you to serve the whole of the sentence that was suspended. Do you understand?

64 OFFENDER: Yes, Your Honour.

65 HER HONOUR: Thank you.

Statement and direction under s.6AAA of the *Sentencing Act* 1991

66 I am required to state the sentence and non-parole period, if any, that would have been imposed in respect of the offences but for the plea of guilty. Therefore, pursuant to s.6AAA of the *Sentencing Act* 1991, and taking into account the matters I have previously referred to as relevant to the weight to be given to your guilty plea, I state that but for your guilty plea, the sentences I would have imposed are as follows:

67 a. On Charge 1, obtaining a financial advantage by deception, you would have been convicted and sentenced to 18 months' imprisonment (the base sentence).

68 b. On Charge 2, attempt to obtain a financial advantage by deception, you would have been convicted and sentenced to nine months' imprisonment.

69 c. On Charge 3, make false document, you would have been convicted and sentenced to six weeks' imprisonment.

70 d. On the question of cumulation, I would have directed that four and a half months of the sentence imposed on Charge 2, be served cumulatively with the sentence imposed on Charge 1. The total effective sentence would therefore have been twenty and one-half months' imprisonment.

71 e. I would have directed that you serve a minimum of 15 months' imprisonment before becoming eligible for parole.

72 I direct, pursuant to s.6AAA, that the sentences that would have been imposed but for the plea of guilty, be noted in the court's records.

Ancillary Orders

73 Now there was a compensation order?

74 MS NAIMO: There was, Your Honour.

75 HER HONOUR: I am sorry, it has become a little crumpled. Do you have a clean copy?

76 MS NAIMO: I have a clean copy of the version that I printed, but I did have a brief discussion with your associate yesterday. I don't know whether that's - I think your associate's going to print out another copy, Your Honour.

77 HER HONOUR: Thank you. The order is not opposed, is that right Ms Ljubrcic?

78 MS LJUBRCIC: No, Your Honour, it's by consent.

79 HER HONOUR: Thank you. I make the compensation order. I order that Vu Nguyen pay to the Commonwealth Bank of Australia, 325 Collins Street Melbourne, compensation in the sum of $59,000. Are there any other orders?

80 MS NAIMO: No, Your Honour. Those are the matters.

81 HER HONOUR: Thank you. Ms Naimo, I do not think the prisoner needs to sign anything acknowledging that he on a suspended sentence?

82 MS NAIMO: No, I don't think that's the case, Your Honour.

83 HER HONOUR: So he may now be released?

84 MS NAIMO: As Your Honour pleases.

85 HER HONOUR: Thank you. Yes, adjourn the court please till tomorrow morning at 10.30.

86 - - -

IN THE COUNTY COURT OF VICTORIA
AT MELBOURNE CR-19-01646
CRIMINAL JURISDICTION Indictment No: K10298115

DIRECTOR OF PUBLIC PROSECUTIONS

v

VU NGUYEN

PROSECUTION OPENING ON PLEA

Date of document:	13 November 2019
Filed on behalf of:	Director of Public Prosecutions
Prepared by:	Solicitor's code: 7539
JOHN CAIN	Reference: A Sprague / R Yousuff
Solicitor for Public Prosecutions	Telephone: (03) 9603 7666
565 Lonsdale Street	File Number: 1900880
Melbourne VIC 3000	

87 OVERVIEW

1. The offender in this matter is Vu NGUYEN, also known as Jay NGUYEN and Vu Long Phi NGUYEN. He was born on 19 December 1976 and was 30 years old at the time of the offending. He is now 42.

2. The victim in this matter is Commonwealth Bank of Australia.

3. The offender is pleading guilty to the following charges on indictment K10298115:

Charge 1: Obtaining a financial advantage by deception contrary to s82(1) of the *Crimes Act 1958*

Charge 2: Attempting to obtain a financial advantage by deception contrary to s321M of the *Crimes Act 1958*

Charge 3: Make false document, contrary to s83A(1) of the *Crimes Act 1958*

88 BACKGROUND

4. The offender is an ex-employee of Commonwealth Bank of Australia ('CBA'), and had been employed as a mobile lender, working predominantly in the western suburbs of Melbourne with the Vietnamese community. He was employed by CBA for 5 years, including 3 years as a mobile lender.

CIRCUMSTANCES OF THE OFFENDING:

Charge 1:

5. On or about 11 July 2007 the offender NGUYEN prepared a Commonwealth Bank debit slip (Home Loan Redraw) to withdraw $210,000 from a CBA home loan account in the name of Hai Thi HOANG (account number 369090501 651107).[8]

6. HOANG was a customer who had taken out a loan through the offender, when the offender was working for CBA. The loan account had previously been repaid, so had a large amount available for withdrawal.

7. The debit slip bore a signature purported to be that of the account holder HOANG, and also bore a name and signature purported to be those of the bank 'Authorised Signing Officer', Debbie LIN.

8. At this time the offender also prepared three deposit slips with amounts to be deposited, out of the $210,000 from the HOANG loan account, into the following accounts:[9]

a. Thi B LE (account number 064148 10296739) – for the amount of $60,000;

b. Thi N DAM (account number 063168 10631462) – for the amount of $70,000; and

[8] Exhibit 1: Commonwealth Bank Debit Slip 11/07/2007 (p72 Depositions)
[9] Exhibits 2-4: CBA Deposit Slips (p73-75 Depositions)

c. T.P NGUYEN (account number 063132 00650754) – for the amount of $80,000.

9. Thi Nga DAM is the mother of Diem PHAM, the offender's girlfriend at the time.

10. The debit and deposit slips were placed into the internal CBA mail by an unknown means, and processed overnight on 11 July 2007. This meant that the three beneficiaries had the funds available in their accounts as soon as the slips were processed.

89 (Charge 1: Obtaining financial advantage by deception – $210,000)

11. On the morning of 12 July 2007 all beneficiaries attended at various CBA branches in the western suburbs of Melbourne, where they withdrew large amounts of cash, and made further withdrawal attempts, as follows:

    a. T.P. NGUYEN withdrew $30,000 in four transactions between 7:00am and 11:00am, before being arrested at CBA Footscray branch at 2:30pm while attempting to withdraw a further $40,000;

    b. Thi LE withdrew $9,000 at 10:00am, and attempted to place $50,000 into T.P. NGUYEN's account using a bank cheque which was subsequently cancelled by CBA; and

    c. Thi Nga DAM, together with the offender's girlfriend Diem PHAM, withdrew $20,000 between 8:30am and 10:30am, and later attempted to withdraw $50,000 at the CBA Sunshine branch, which was blocked.

12. A total of $59,000 was withdrawn by T.P. NGUYEN, Thi LE and Thi DAM before CBA placed a freeze on the relevant accounts.[10]

Charge 2:

13. On or around 27 July 2007 the offender filled out another CBA Home Loan Redraw debit slip, to withdraw $250,000 from a home loan account in the name of K.C. & L.C. DUONG (account number 351112506 652707).[11]

14. K.C. & L.C. DUONG were also previous customers who had taken out the loan through the offender, when he was working at CBA.

15. Again the debit slip bore signatures purported to be those of the account holders and the bank authorising officer – on this occasion Kween Wah LIN.

16. The offender also prepared a deposit slip, for the entire $250,000 to be deposited, from the DUONG loan account, into the account of Linh Vu PHAM (account number 063168 110633759).[12]

17. Linh Vu PHAM is the brother of Diem PHAM, the offender's girlfriend at the time.

[10] Statement of Paul HART
[11] Exhibit 5: CBA Debit Slip 27/07/2007 (p76 Depositions)
[12] Exhibit 6: CBA Deposit Slips (p77 Depositions)

18. The debit and deposit slips were again placed by unknown means into the CBA internal mail. Prior to the mail being conveyed to the processing centre, bank staff who had dealt with the first deception observed the slips and removed them from the mail.[13] As a result, the transaction was not processed, and no funds were withdrawn from the DUONG account or deposited to PHAM.

90 (Charge 2: Attempting to obtain financial advantage by deception – $250,000)

Charge 3:

19. The offender was arrested by police at his home address on 31 August 2007. In a car at the address police located three USB storage drives which contained electronic copies of various payslips and bank statements in several different names, which appeared to be fraudulent.[14]

20. The various payslips and bank statements are essentially the same documents, with various details including names, dates and amounts altered.

21. The offender had made the 22 false documents, being 14 payslips and 8 bank statements, with the intention that he and/or another person would use them to induce unknown persons to accept them as genuine and do or not do some act to that person's prejudice.

91 (Charge 3 – Make false document)

22. The particulars of the 22 false documents made by the offender are as follows:

    a. Pay slip from Layla Co in the name of Ngoc Bich Luu dated 7 June 2007;
    b. Pay slip from Layla co in the name of Ngoc Bich Luu dated 13 July 2007;
    c. Pay slip from Layla Co in the name of Ngoc Bich Luu dated 20 July 2007;
    d. Pay slip from Layla Co in the name of Ngoc Bich Luu dated 27 July 2007;
    e. ANZ Everyday VISA Debit bank statement in the name of Huyen Thi Pham for the period 4 January 2007 – 31 July 2007;
    f. Progressive Saver bank statement in the name of Hyuen Thi Pham for the period 14 January 2007 – 31 March 2007;
    g. Progressive Saver bank statement in the name of Ha Thi Tran for the period 14 January 2007 – 31 March 2007;
    h. Pay slip from Layla Co in the name of Ha Thi Tran dated 27 July 2007;
    i. Pay slip from Dong Hiep Kitchen in the name of Hoang Huy Vu dated 18 May 2007;
    j. Progressive Saver bank statement in the name of Hoa Thi Tran for the period 14 January 2007 – 31 March 2007;
    k. Pay Slip from Layla Co in the name of Trang T Nguyen dated 13 July 2007;
    l. Pay Slip from Layla Co in the name of Trang T Nguyen dated 27 July 2007;
    m. Pay Slip from Layla Co in the name of Trang T Nguyen dated 8 October 2007;
    n. Progressive Saver bank statement in the name of Trang T Nguyen for the period 4 January 2007 – 31 July 2007;
    o. Progressive Saver bank statement in the name of Phi Long Nguyen for the period 1

[13] Statement of Amanda DREW; Statement of Kim ANDIPAS
[14] Exhibits 11-32 (pp78-107 Depositions)

January 2007 – 31 July 2007;

p. Progressive Saver bank statement in the name of Long Vu for the period 4 January 2007 – 31 July 2007;
q. Pay Slip from Le Import Pty Ltd in the name of Long Vu dated 7 January 2007;
r. Pay Slip from Le Import Pty Ltd in the name of Long Vu dated 14 January 2007;
s. Progressive Saver bank statement in the name of Long Vu for the period 1 January 2007 – 31 March 2007;
t. Pay Slip from Layla Co in the name of Lan Thi Phan dated 7 June 2007;
u. Pay Slip from Layla Co in the name of Lan Thi Phan dated 13 July 2007; and
v. Pay Slip from Layla Co in the name of Lan Thi Phan dated 20 July 2007.

92 INTERVIEW

23. The offender was conveyed to Footscray Police Station following his arrest on 31 August 2007, and was interviewed by police.[15]

24. In the interview the offender made the following admissions and statements:

a. He filled out the two debit slips (Q161, Q301-302), including the signatures and details of the authorising officer, knowing that it was the name of a person who could authorise the withdrawal (Q278-279, Q299);
b. He partially filled out the deposit slips, and gave them to associates to complete the deposit account details (Q163, Q303);
c. He had another male associate place the slips into the CBA internal mail (Q240-243);
d. His family had obtained a personal loan which had a short term and high interest, and so he had to do this to pay it back (Q174-178);
e. The debt related to an overseas business venture in Vietnam (Q175);
f. The debt was owed to T.P. NGUYEN and Thi LE, as the money was loaned by their group (Q186-191);
g. The loan was obtained in late 2006 for $40,000, but the lender was charging them up to 80 (Q182-183, Q195);
h. The $70,000 placed into DAM's account was a back-up to make sure that they had enough money to pay the lenders more money if they demanded it (Q200-204);
i. When the first one (withdrawal of $210,000) didn't go through in full, he did it again as he still owed money that he had to pay (Q333-338);
j. He was to get about 10 per cent of the second withdrawal (Q327);
k. In relation to the false payslips and bank documents, he created them for people to use to get personal loans or credit cards. Those people pay him a fee, of about $2,000, to make whatever bank statements or payslips they require. (Q343-354)
l. He didn't see it as the wrong thing, because the clients are intending to pay the loan, and brokers and home lenders do the same thing. (Q532-534)

25. The offender was released pending summons.

[15] Exhibit 36: Transcript of tape-recorded interview (p108-173 Depositions)

93 CO-OFFENDERS

26. Paul Than NGUYEN (T.P. NGUYEN)

    a. In relation to the cash withdrawals on 12 July 2007, Paul Than NGUYEN was sentenced on 29 June 2010 at Sunshine Magistrates' Court in relation to four charges of theft.

    b. He was sentenced to 3 months' imprisonment, fully suspended.

    c. A compensation order was made for $29,300.

27. Thi Nga DAM:

    a. In relation to the withdrawal and attempted withdrawal of cash on 12 July 2007, Thi Nga DAM was sentenced on 25 June 2019 at Melbourne Magistrates' Court in relation to two charges of theft and one charge of attempted theft.

    b. She was sentenced to an adjourned undertaking for 12 months.

28. Diem PHAM:

    a. In relation to the withdrawal and attempted withdrawal of cash on 12 July 2007, Diem PHAM was sentenced on 4 June 2019 at Melbourne Magistrates' Court in relation to two charges of theft, one charge of attempted theft and failing to answer bail.

    b. She was sentenced to an adjourned undertaking for 12 months.

OTHER MATTERS

94 CHRONOLOGY

Date	Event	Outcome
March – August 2007	Offending	
31 August 2007	Offender arrested and interviewed	Released pending summons.
6 July 2009	Charges filed, summons issued	Summons not served – offender not located. Charge and warrant subsequently issued.
16 January 2013	Further charge and warrant issued.	
2 February 2019	Warrant executed	
18 February 2019	Filing Hearing	
1 April 2019	Committal Mention	Adjourned for offender to obtain representation.
1 May 2019	Committal Mention	Adjourned for VLA funding to be determined.
4 July 2019	Committal Mention	Adjourned for VLA to further consider funding application.
2 August 2019	Committal Mention	Adjourned due to funding issues, and discussions on resolution.

16 August 2019	Committal Mention	Matter resolved, offender committed on current charges by straight hand-up brief, with guilty pleas entered.
6 December 2019	Plea Hearing, County Court	

95 PLEA OF GUILTY

29. The offender entered guilty pleas to the charges on the indictment at the committal mention stage.

30. A declaration under s6AAA of the *Sentencing Act 1991* is required if applicable.

CRIMINAL HISTORY

31. The offender has prior convictions and a criminal record will be filed.

PRE-SENTENCE DETENTION

32. The offender has not spent any time in custody in relation to this matter.

96 MAXIMUM PENALTIES

33. The maximum penalties applicable are as per the following table:

Charge No.	**Offence**	**Act / Section**	**Maximum Penalty**
Charge 1	Obtaining a financial advantage by deception	s82(1) *Crimes Act 1958*	10 years
Charge 2	Attempting to obtain a financial advantage by deception	s321M *Crimes Act 1958*	5 years
Charge 3	Make false document	s83A(1) *Crimes Act 1958*	10 years

97 SUSPENDED SENTENCE

34. A suspended sentence is available, as the offences were committed in 2007. The *Sentencing Act 1991* as it was in force between 1 November 2006 and 30 April 2011 allowed for the imposition of suspended sentences.

35. The *Sentencing (Suspended Sentences) Act 2006* introduced a new s 27(1A), which set out mandatory factors to be considered by a court when determining whether to impose a suspended sentence. That provision will apply in this case.

36. The sentence limit for suspended sentences under s 27(2) is applicable. That is, a sentence imposed in the County Court or Supreme Court can only be suspended (in whole or in part) where the aggregate period of imprisonment imposed is no more than three years.

CONTINUING CRIMINAL ENTERPRISE OFFENDER PROVISIONS

37. These provisions do not apply.

SERIOUS OFFENDER PROVISIONS / MANDATORY CUSTODIAL SENTENCE PROVISIONS / STANDARD SENTENCE SCHEME / MINIMUM NON-PAROLE PERIOD PROVISIONS

38. These provisions do not apply.

98 **ANCILLARY ORDERS**

39. Compensation: Application will be made for compensation in relation to the loss of property for funds withdrawn, and a draft order will be filed in advance.

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